

## University of Oklahoma College of Law University of Oklahoma College of Law Digital Commons

---

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

---

2-25-1878

Delegate in Congress from the Indian Territory.  
Objections of the Indian delegations to the bill H.  
R. 2687, and kindred measures in the Congress of  
the United States, providing for a delegate in  
Congress from the Indian Territory

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

---

### Recommended Citation

H.R. Misc. Doc. No. 32, 45th Cong., 2nd Sess. (1878)

This House Miscellaneous Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

DELEGATE IN CONGRESS FROM THE INDIAN TERRITORY.

---

OBJECTIONS  
OF THE  
INDIAN DELEGATIONS  
TO

*The bill H. R. 2687, and kindred measures in the Congress of the United States, providing for a Delegate in Congress from the Indian Territory.*

---

FEBRUARY 25, 1878.—Referred to the Committee on Indian Affairs and ordered to be printed.

---

*To the Honorable the Congress of the United States :*

The undersigned, duly appointed and accredited delegates of the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations of Indians, respectfully ask leave to invite attention, as we now do, to the several bills now pending before the Senate and House of Representatives entitled generally as bills "to authorize the election of a Delegate to Congress from the Indian Territory." Our object in calling the attention of your honorable body to these bills is to inform you that we object to their passage, or either one of them, and to ask that no such measures be enacted by you, for the following reasons :

1st. They propose to violate or supersede the Cherokee treaty of 1835. (Revision Ind. Treaties, p. 70.) Article 7 of that treaty provides : \* \* \* "It is stipulated that they (the Cherokees) shall be entitled to a Delegate in the House of Representatives of the United States whenever Congress shall make provision for the purpose." By reference to the treaty provision it will be seen that the Cherokees will simply be "entitled" to a Delegate when Congress shall have made provision for such contingency. There is no provision in the treaty that would *compel* the Cherokees to elect and send a Delegate to Congress though Congress might make provision for that purpose. The matter of availing themselves under the treaty of the privilege to send such a Delegate to Congress is clearly left to the *volition* of the Cherokees should Congress make provision for such Delegate. The bills under consideration make no provision for the *assent* of the Cherokees or any other Indian nation to be affected by them. Indeed they are just the reverse ; so that if either

one of them becomes a law the Indian nations within its purview will be compelled by its terms to elect and send a Delegate to Congress, whether they choose to do so or not. Furthermore, the treaty quoted applies only to the Cherokees, and does not apply to the Choctaws, Chickasaws, Creeks, and Seminoles, and they have never assented to its provisions. It would therefore be manifestly wrong to apply these provisions to the people of these nations without their consent, especially when they are protesting against it. If the Cherokees should ever be entitled to a Delegate in Congress by virtue of Congressional action, as their treaty provides, they should exercise their own choice as to availing themselves of the privilege that might thus be given, and should, moreover, control their own elections for the purpose, at which no voters should be allowed except *bona fide* citizens of the nation; and such elections should not be interfered with or controlled in any manner by the Secretary of the Interior or any other officer of the United States, because the Cherokee Nation is not a Territory of the United States, nor are its citizens to be considered as citizens of the United States. The bills referred to, notably the one H. R. 2678, as a substitute for bill H. R. 979, and reported from the Committee on Indian Affairs January 22, 1878, is sweeping in its character, and includes not only the Cherokees, but also takes in its scope the Choctaws, Chickasaws, Creeks, and Seminoles, and declares that the Delegate provided for shall be elected under the direction of the Secretary of the Interior, and that the election shall be conducted by such persons as *he* may appoint, and that he shall issue the certificate of election, as though the citizens of said nation were actually citizens of the United States and embraced within the territory of the United States. To show further that this is the tendency of the bill we need only refer you to its fourth and last section, which provides that all elections, after the first one, for a Delegate, "shall be held at the times prescribed by the existing laws of the United States for holding elections in the *organized Territories* of the United States, and the manner of holding said elections shall be prescribed by the Secretary of the Interior until otherwise provided by law." It will thus be seen that the elections for Delegate under the bill depend upon the laws of Congress already enacted for the "organized Territories" of the United States, and to other subsequent acts of Congress looking in the same direction, and not upon the legislative enactments of the Indian nations to be affected; and, furthermore, that the people of these nations are not to be consulted at all as to the manner of such elections, that matter being left entirely with the Secretary of the Interior, until "otherwise ordered" by Congress. These facts are enough to show you that the bill in question denies the Indians the highest and most sacred right of freemen, viz, the right of controlling their own elections; and, furthermore, proposes to make or consider the Indians as citizens of the United States, when they are in fact no such citizens. Indeed, by the Constitution of the United States no people can be represented in Congress but citizens of the United States, because no one can vote to elect a Representative but such citizens; so that the logic or result of the bill will be to make the Indians it affects citizens of the United States, who will thereafter be subject to taxation the same as other citizens, for it is a principle of your government that representation and taxation are inseparable. There is a provision (fourteenth amendment) in your Constitution that declares in effect that all persons born in the United States and "subject to its jurisdiction" are citizens thereof, and are entitled to representation, "*excluding Indians not taxed.*" Also

you have a statute (see Revised Statutes, Title XXV, s. 1992, p. 351) which declares that "all persons born in the United States and not subject to any foreign power, *excluding Indians not taxed*, are declared to be citizens of the United States." If this bill becomes a law the Indians will be subject to the "jurisdiction of the United States," because they (the Indians) will be, in the important privilege of their representation in Congress, subject to the control of the Secretary of the Interior and the Congress of the United States. This situation of affairs, giving the United States Government jurisdiction over the Indians, will, of course, make the Indians citizens of the United States, and as such they will be subject to taxation, and will no longer be Indians within the political meaning of the Constitution and statute referred to. In view of such a state of affairs, and of the further fact that no people are entitled to representation in the Congress of the United States except citizens of the United States, it cannot be denied that the bill under consideration, if it become a law, will have the effect of making the Indians it affects citizens of the United States. Such a radical change in the political status of our people would of necessity destroy their autonomy, and would at once destroy our own national organizations—a consummation which we are neither authorized nor disposed to accept, and which would be palpably in violation of all of our treaties and the public faith of your own government.

2d. The bills under consideration are plainly violative of article 8, section 9, of the Choctaw and Chickasaw treaty of 1866. (See Revision Indian Treaties, p. 291.) That section provides that, whenever Congress shall make provision for a Delegate to Congress from the Indian Territory, such Delegate shall be elected by the general Indian "council" provided for in the treaty. This section provides as follows: "Whenever Congress shall authorize the appointment of a Delegate from said (Indian) Territory, it shall be the province of said council to elect one from among the nations represented in said council." The bill in question entirely *ignores* this Indian council, in the matter of electing the Delegate provided for, and, as before stated, places such elections at the control of the Secretary of the Interior, and such acts of Congress as *now* exist or may hereafter be passed by Congress relating to the Territories of the United States. That this is the case we cannot but be greatly astonished, as this legislative council, or Indian congress, is plainly provided for, and its jurisdiction clearly defined by the several treaties of 1866 between the Cherokees, Choctaws, Chickasaws, Creeks, and Seminoles. (See Ind. Treaties, pp. 90, 119, 289, 815.) This general Indian congress was organized in December, 1869, by the Interior Department, as authorized by treaty, and was legitimized by an act of the Forty-first Congress in 1870 (see U. S. Stats. 16, p. 359), when the sum of \$10,000 was appropriated to pay its expenses for that year. Every Congress, including the Forty-first, Forty-second, Forty-third, and Forty-fourth, has made appropriations to pay the expenses of this council, and there is now in the Treasury Department, subject to the expenses of said council, the sum of \$5,000, appropriated by the last (Forty-fourth) Congress. A notable feature of this organic act of Congress of 1870 is that it provides, in accordance with the treaties of 1866, that other Indians of the Indian Territory, besides the Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles, shall be represented in the council, in the following proviso: "*Provided*, That any other Indian tribe, permanently located in said Indian Territory, shall be and is hereby authorized to elect and

send to said 'general council' one delegate, and, in addition, one delegate for each one thousand Indians, or fraction of a thousand greater than five hundred, being members of such tribe, on the same terms and conditions and with the same rights and privileges, including right to compensation, as is provided for delegates of the tribes (Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles) hereinbefore mentioned, and a sufficient sum to pay the *per diem* and mileage of such additional delegates is hereby appropriated."

Also, in establishing this council, the census of the Indians was taken according to the treaties for that purpose; and, agreeably to which, the Secretary of the Interior is directed by the treaties to apportion the number of delegates to the council to which such tribe or nation is entitled according to the ratio provided by the treaties; and the Indian nations have accordingly passed laws (now in their statute-books) providing for the election of such delegates, who have been duly elected, as any other officers, and are commissioned, and are *now* members of the council. The several annual reports of the Indian Bureau and the Board of Indian Commissioners, since that time, show that there are represented in this general Indian council, at present, thirty-two distinct Indian tribes of the Indian Territory, making twenty-seven tribes besides the original ones—Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles; and but a few days since the Indian Department made estimates to Congress for the usual appropriations for this council, which, according to treaty stipulations, Congress is as much bound to appropriate as it is our current annuity funds. It will thus be seen that this Indian council (or congress) has, in good faith to the Indians, been as legally established as any other legislative body that the United States Government has ever authorized, and is still in existence; and we respectfully insist that Congress has no right to pass the bill referred to, or any other measure, in disregard of this council.

3d. This bill is not what it pretends to be. It assumes to be for the purpose of allowing the "Indian Territory" to have a Delegate in Congress, and its scope is confined to but five of the nations of that country, viz, the Choctaws, Chickasaws, Cherokees, Creeks, and Seminoles. The other twenty-seven tribes of that country—the Osages, Quapaws, Senecas, Pottawatomies, Comanches, Chiens, and Arapahoes, &c.—are entirely denied any representation. These Indians all have representation in the general Indian council now in the country, and are as much entitled to be represented as the nations named in the bill, as all alike reside in the Indian Territory, and the treaty obligations of all are equally binding on the United States Government. It seems to us that the simplest principles of common justice would require these Indian tribes to be also heard in choosing a Delegate to represent them. And further, we would, in this connection, beg to remind you that the Creeks and Seminoles, and the other tribes in the Indian Territory (about twenty-seven in number) that are not named in the bill, have never, either directly or indirectly, given their consent that Congress should legislate for the appointment or election of a Delegate to represent them in Congress.

For the general reasons hereinbefore set forth, we respectfully protest against the passage by Congress of the bill H. R. 2687, or any kindred

measure, providing for a Delegate in Congress to represent the Indian Territory.

We have the honor to be, with great respect, your obedient servants,

B. F. OVERTON,  
*Governor of Chickasaw Nation.*

JOSIAH BROWN,  
*Chickasaw Delegate.*

P. P. PITCHLYNN,  
D. F. HARKINS,  
*Choctaw Delegates.*

W. P. ADAIR,  
DANIEL H. ROSS,  
*Cherokee Delegates.*

JOHN R. MOORE,  
PLEASANT PORTER,  
D. M. HODGE,  
YAR TEKA HARJO,  
*Creek Delegation.*

JOHN F. BROWN,  
THOMAS CLOUD,  
*Seminole Delegation.*